

Chapter 403

TRANSIENT MERCHANTS

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[HISTORY: Adopted by the Village Board of the Village of Endeavor at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 403-1. Registration required.

It shall be unlawful for any transient merchant to engage in direct sales within the Village of Endeavor without being registered for that purpose as provided herein.

§ 403-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CHARITABLE ORGANIZATION — Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

CLERK-TREASURER — The Village of Endeavor Clerk-Treasurer or Deputy Clerk-Treasurer.

MERCHANDISE — Includes personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of merchandise by a donor or prospective customer.

PERMANENT MERCHANT — Any person who, for at least one year prior to the consideration of the application of this chapter to said merchant:

- A. Has continuously operated an established place of business in the local trade area among the communities bordering the place of sale; or
- B. Has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his residence.

PERSON — All humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

TRANSIENT MERCHANT — Any individual who engages in the retail sale of merchandise at any place in this state temporarily and who does not intend to become and does not become a permanent merchant of such place. For purposes of this definition, "sale of merchandise" includes a sale in which the personal services rendered upon or in connection with the merchandise constitute the greatest part of value for the price received but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm or the sale of produce or other perishable products at retail or wholesale by a resident of this state. "Transient merchant" shall include any person who sells products for immediate delivery to individual residences or to persons on the street.

§ 403-3. Exemptions.

A. The following shall be exempt from all provisions of this chapter:

- (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- (2) Any person selling merchandise at wholesale to dealers in such merchandise.
- (3) Any person selling agricultural products which the person has grown.
- (4) Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in his regular course of business.
- (5) Any person who has an established place of business where the merchandise being sold is offered for sale on a regular basis and in which the buyer has initiated contact with, and specifically requested a home visit by, said person.
- (6) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (7) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise.
- (8) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (9) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk-Treasurer proof that such charitable organization is registered under § 440.42, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under § 440.42, Wis. Stats., or which is exempt from that statute's registration requirements shall be required to register under this chapter.
- (10) Any person who claims to be a permanent merchant but against whom complaint has been made to the Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the Village Clerk-Treasurer proof that such person has leased for at least one year, or purchased, the premises from which

he/she is conducting business or proof that such person has conducted such business in this Village for at least one year prior to the date complaint was made.

- (11) Any individual licensed by an examining board as defined in § 15.01(7), Wis. Stats.
- B. This chapter does not apply to transient merchants while doing business at special events authorized by the Village Board.

§ 403-4. Registration procedure.

- A. Registration information. Applicants for registration must complete and return to the Clerk-Treasurer a registration form furnished by the Clerk-Treasurer which shall require the following information:
- (1) Name, permanent address and telephone number, and temporary address, if any.
 - (2) Height, weight, color of hair and eyes, and date of birth.
 - (3) Name, address and telephone number of the person, firm, association or corporation that the transient merchant represents or is employed by or whose merchandise is being sold.
 - (4) Temporary address and telephone number from which business will be conducted, if any.
 - (5) Nature of business to be conducted and a brief description of the merchandise offered and any services offered.
 - (6) Proposed method of delivery of merchandise, if applicable.
 - (7) Make, model and license number of any vehicle to be used by the applicant in the conduct of his business.
 - (8) Last cities, villages, and towns, not to exceed three, where the applicant conducted similar business just prior to making this registration.
 - (9) Place where the applicant can be contacted for at least seven days after leaving this Village.
 - (10) Statement as to whether the applicant has been convicted of any crime or ordinance violation related to the applicant's transient merchant business within the last five years, the nature of the offense and the place of conviction.
- B. Identification and certification. Applicants shall present to the Village Clerk-Treasurer for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required.
 - (2) A state certificate of examination and approval from the Sealer of Weights and Measures where the applicant's business requires use of weighing and measuring devices approved by state authorities.

- (3) A state health officer's certificate where the applicant's business involves the handling of food or clothing and is required to be certified under state law, such certificate to state that the applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

C. Registration fee; service of process; photo identification card.

- (1) At the time of filing application, a fee as set by the Village Board shall be paid to the Village Clerk-Treasurer to cover the cost of investigation of the facts stated in the application and for processing said registration. Every member of a group must file a separate registration form.
- (2) The applicant shall sign a statement appointing the Village Clerk-Treasurer or his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event that the applicant cannot, after reasonable effort, be served personally.
- (3) Upon payment of said fee and the signing of said statement, the Village Clerk-Treasurer shall register the applicant as a transient merchant and date the entry. Said registration shall be valid through December 31 of the year in which the application is made.
- (4) The approved applicant shall obtain a photo identification card annually from the Village Clerk-Treasurer. The photo identification card shall show the applicant's name, the date of issuance and the date of expiration. The identification card shall be properly and conspicuously displayed at all times by the applicant when engaged as a transient merchant in this Village. An identification card shall be deemed to be properly displayed when it is attached to the outer garment of the transient merchant and it is clearly visible to the public and law enforcement officials.

§ 403-5. Investigation.

- A. Upon receipt of each application, the Village Clerk-Treasurer may refer it immediately to the Chief of Police or his/her designee for an investigation of the statements made in such registration, said investigation to be completed within five days from the time of referral.
- B. The Village Clerk-Treasurer shall refuse to register the applicant if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is direct related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of § 403-4B above.

§ 403-6. Appeals.

Any person denied registration may appeal the denial to the Village Board by filing a written statement therewith within 14 days after the date registration was denied setting forth the grounds for appeal. The Village Board shall notify the applicant, at least 48 hours prior to the hearing date, of the time and place set for the hearing, such notice to be sent to the address given by the appellant in his statement of appeal or served personally on the appellant.

§ 403-7. Prohibited practices; disclosure requirements.**A. Prohibited practices.**

- (1) A transient merchant shall be prohibited from calling at any dwelling or other place between the hours of 9:00 p.m. and 8:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
- (2) A transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any merchandise offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization transient merchant shall specifically disclose what portion of the sale price of merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.
- (3) No transient merchant shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- (4) No transient merchant shall make any loud noises or use any sound-amplifying device to attract customers if the noise produced is capable of being plainly heard outside a seventy-five-foot radius of the source.
- (5) No transient merchant shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

B. Disclosure requirements.

- (1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of the merchandise or services he offers to sell.
- (2) If any sale of merchandise is made by a transient merchant or any sales order for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than \$25, in accordance with the procedure as set forth in § 423.203, Wis. Stats. The seller shall give the buyer two copies of a typed or

printed notice of that fact. Such notice shall conform to the requirements of § 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.

- (3) If the transient merchant takes a sales order for the later delivery of merchandise, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

§ 403-8. Violations and penalties.

- A. Any person adjudged in violation of this chapter shall be subject to a penalty as provided in Chapter 1, § 1-4 of this Code for each violation plus costs of prosecution. Each day's violation shall constitute a separate offense.
- B. The Chief of Police or his/her designee shall report to the Village Clerk-Treasurer all convictions for violations of this chapter and the Village Clerk-Treasurer shall note any such violation on the record of the registrant convicted.

§ 403-9. Revocation of registration.

- A. Registration may be revoked by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.
- B. Written notice of the hearing shall be served personally or pursuant to § 403-4C(2) on the registrant at least 72 hours prior to the time set for the hearing. Such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.